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10/753,255	01/08/2004	John Layous	GARLIC2003	6747

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EXAMINER

PRATT, HELEN F

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 11/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/753,255

Applicant(s)

LAYOUS ET AL.

Examiner

Helen F. Pratt

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 1-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. No basis is seen in the specification for the phrase in claim 1 of "without eliminating".

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 11 is indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 is indefinite in that the claim is incomplete. No limitations are seen the claim.

No antecedent basis is seen for the term "bits" in claim 11 as in claims 12-14.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Meiji (JP 59216565).

Meiji discloses a garlic piece as in claim 11 (abstract). It is not known what size of garlic piece is required, therefore, the garlic of Meiji is seen to read on the claim.

Claim Rejections - 35 USC § 103

Claims 1, 2, 3, 5, 7, 8, 9, 11-14, 16-17, 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meiji (JP 59216565A) in view of Rombauer et al.

Meiji discloses a process of blanching raw garlic without the peel in hot water, steam treatment, frying in oil to pre-treat the garlic, and then frying in hot oil to deodorize the garlic (abstract). Claims 1, 2, 3, 5, 7, 8, 9, 12-14, 16, 17 differ from the reference in the step of cutting the garlic into bits. However, the size of the bits it is not known. It is seen that it would have been within the skill of the ordinary worker to cut the garlic into whatever size was required as chopping and cutting of vegetables is well known. Rombauer et al et al. disclose that it is known to blanch garlic, cook, and mince garlic (page 584, 2nd col. under garlic). Claims 1 and 8, 16 further requires reducing the strength of the garlic flavor without eliminating the flavor. However, this is seen as being within the skill of the ordinary work, as it is not known just what point applicant requires that the flavor is reduced, and this could be left to one's own preference as how strong the product should be. Therefore, it would have been obvious to cut garlic into small pieces as disclosed by Rombauer et al. in the process of Meiji if one wants small pieces or bits of garlic to reduce the flavor, without eliminating it.

Claims 19-21 further require that the garlic bits are a particular size. Garlic is

Art Unit: 1761

known to be used in sizes from cloves, to slivers to a paste (Rombauer, page 854).

Therefore, it would have been obvious to cut garlic to known sizes.

Claim 7 further requires reducing the size of the garlic bits after cooling and removing excel oil from frying. However, reducing a vegetable in size according to its use is an age-old practice in the food art. Garlic is known to be used in sizes from cloves, to slivers to a paste (Rombauer, page 854). Therefore, it would have been obvious to further chop garlic to whatever practical size deemed necessary.

The limitations of claim 11 are seen to have been obvious and are shown by the above combination of references.

Claims 4, 6, 10-15, 18, 22, 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above references as applied to the above claims, and further in view of Sakamoto (3,082,310).

Claims 4, 6, 10, 18 further require that strength of the garlic is reduced by baking the garlic bits. Sakamoto discloses that it is known in the prior art to bake garlic, and that baking results in a loss of volatile elements (col. 1, lines 15-25, lines 30-35). Certainly, much of the flavor of garlic is in the volatile elements. Therefore, it would have been obvious to bake the garlic bits in the process of the combined bits to reduce the flavor caused by volatile elements.

The composition has been shown as in claims 11-15 because the garlic bits have reduced strength of flavor and bitterness due to loss of volatile elements as disclosed by the combined references above. No weight is given to the process limitations of frying and baking and slicing and dicing as in claims 12-15 in composition claims. Rombauer

Art Unit: 1761

discloses the use of slivers which is seen to have been between the claimed amounts absent a showing to the contrary. Therefore, it would have been obvious to make a product with reduced garlic flavor using other methods as shown above.

Claim 22 is further to a product which has been disclosed above and is obvious for those reasons. Claim 23 further requires cutting the garlic to a particular size and reducing the strength of the garlic and frying it. Rombauer discloses that it is known to sliver garlic (page 584, under oriental garlic, line 9, from the bottom in col. 1). Seika discloses that it is remove the odor (strength) of garlic before frying it (abstract). As the claims are open comprising claims, no weight is given to the order of steps. At any rate, it would have been obvious to reduce the size of the garlic at any point in processing the garlic in order to make a particular end product, as slicing of garlic is known as shown by Rombauer. Therefore, it would have been obvious to reduce the garlic in size as shown by Rombauer in the process of Sakamoto, and Meiji.

ARGUMENTS

Applicant's arguments filed 9-15-05 have been fully considered but they are not persuasive. Applicants argue that as to the 112 rejection of claim 12 that there is support for claims 12 in the description. This was not what was intended by the rejection. No composition limitations are seen in claim 11. They cannot be read into the claims from the specification. In this case, applicant is claiming any and all garlic pieces, in all forms, and that is all.

Art Unit: 1761

As to the second rejection that no basis is seen for the term "bits" in claim 11 as in claims 12-14, this rejection means that no antecedent basis is found in claim 11 for this term (bits).

Applicants argue that the flavor of the garlic is reduced, not eliminated. However, no basis was found in the specification for this limitation. In addition, it would have been within the skill of the ordinary worker to treat the garlic to whatever extent was required. If it is known to blanch or bake garlic, before using it in other products, it would have been obvious to treat it only enough to have an acceptable flavor for whatever the end product was.

Claim 11 is seen to have been anticipated, as a garlic piece has been shown by Meiji.

Arguments as to the 103 rejection concerning garlic reduced odor have been discussed above. Nothing is seen that slicing and dicing would have affected the product of Meiji, as the material, i. e. garlic is the same.

Nothing has been shown by way of a declaration as to the effects of blanching a clove while whole. Rombauer does show garlic slivers as above.

As to Sakamoto, Sakamoto is used to show that it is known to bake garlic to reduce its volatile elements, and not for the whole invention.

It is not seen that the invention has been shown by the prior art.

Attention is invited to *In re Levin*, 84 USPQ 232 and the cases cited therein, which are considered in point in the fact situation of the instant case, and wherein the Court stated on page 234 as follows:

Art Unit: 1761

This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients which produces a new, unexpected, and useful function. In re Benjamin D. White, 17 C.C.P.A (Patents) 956, 39 F.2d 974, 5 USPQ 267; In re Mason et al., 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ 221.

All the steps as to making the garlic pieces have been shown, and no coaction of ingredients is seen to make anything new or unobvious.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 1761

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 11-10-05

H. Pratt
HELEN PRATT
PRIMARY EXAMINER